

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**TIMOTHY L. DONAHO, JR.,)** **Supreme Court #SC84742**  
 )  
**Respondent.** )

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**INFORMANT'S BRIEF**

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### **STATEMENT OF JURISDICTION**

Jurisdiction over this attorney discipline matter is established by Article 5, section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 1994.

## **STATEMENT OF FACTS**

Respondent Donaho was admitted to Illinois' bar in 1990 and to Missouri's bar in 1992. He started practicing law at a firm in Peoria, Illinois, then worked for a firm in Clayton from 1992 to 1994. **T. 17.** From 1994 to early 1998, Respondent worked for a firm in Belleville, Illinois. Respondent had a solo practice in Illinois from January of 1998 until August of 1999. **T. 18, Joint Ex. A, ¶ 5.**<sup>1</sup>

On March 9, 1999, Respondent agreed to represent Donna Campbell in an Illinois post-dissolution matter. **Joint Ex. A, ¶ 1.** A few weeks later, Respondent prepared and sent to Ms. Campbell a motion he had drafted regarding visitation, which Ms. Campbell promptly signed and returned to Respondent. **Joint Ex. A, ¶ 3.** Ms. Campbell paid Respondent \$700 for his work plus \$60 for costs. **Joint Ex. A, ¶ 2.** Respondent never filed the motion. **Joint Ex. A, ¶ 4.**

In August of 1999, Respondent closed his Illinois law practice and began practicing in St. Louis with another lawyer. **Joint Ex. A, ¶ 5; T. 16.** Respondent did not inform Ms. Campbell of his change of address or telephone number. **Joint Ex. A., ¶ 5.** Ms. Campbell repeatedly left messages for Respondent at his home and then, once she found out about it, at his Missouri office. **Joint Ex. A, ¶ 6, 7.** Respondent never returned

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<sup>1</sup> Respondent and Informant agreed to a stipulation of facts, which was admitted to the record as Joint Ex. A. T. 9. The stipulation is similar to one Respondent had already entered into with Illinois disciplinary authorities. **T. 37.**

any of Ms. Campbell's calls. **Joint Ex. A, ¶ 8.** On January 5, 2000, Ms. Campbell sent Respondent a registered letter at his law office, which was signed as received on January 7, 2000. Respondent made no response to the letter. **Joint Ex. A, ¶ 9, 10.** Respondent knew he needed to contact Ms. Campbell, but he just wound up ignoring her. **T. 27-28.**

On December 4, 2000, Ms. Campbell filed a complaint against Respondent with the Office of Chief Disciplinary Counsel. **Joint Ex. A, ¶ 19.** It was the first disciplinary complaint made against him. **T. 17.** On February 26, 2001, Ms. Campbell obtained a default judgment against Respondent in small claims court in the amount of \$765 (representing a refund of the fee paid) plus costs. **Joint Ex. A, ¶ 16, 17; T. 26.** On April 20, 2001, Respondent appeared before Division I of the Regional Disciplinary Committee for Region XI to respond to Ms. Campbell's complaint. **Joint Ex. A, ¶ 20.** By letter dated April 20, 2001, Division I advised Respondent that if he made restitution to Ms. Campbell before May 18, 2001, the Division would consider that fact as a factor in mitigation before making a final determination in his case. Respondent was told that if he made restitution, he should provide evidence that he had done so to Division Special Representative Barry Klinckhardt prior to May 18. **Ex. 1.**

On May 18, 2001, Respondent faxed copies of two money orders to Mr. Klinckhardt. Both were payable to Donna Campbell; one in the amount of \$500 and the other in the amount of \$362.47. The fax cover sheet bore a handwritten note from Respondent to Mr. Klinckhardt stating "Please see attached. Has been mailed certified and I will forward receipt of delivery upon receiving same myself." **Ex. 2; T. 10.** Later that same day, May 18, 2001, Respondent returned to Schnucks, where he had purchased

the two money orders, cashed them back in, and retained the money for his own use. **T.** 11-14; **Joint Ex. A**, ¶ 26, 27. The money orders were never sent to Ms. Campbell. **Joint Ex. A**, ¶ 22.

Respondent sent **Ex. 2**, the fax with the copies of the money orders attached, to Mr. Klinckhardt for the purpose of misleading Division I's Regional Disciplinary Committee into believing that he had made restitution to Ms. Campbell. **Joint Ex. A**, ¶ 25. Respondent's note to Mr. Klinckhardt was deceptive. **T.** 16. Respondent never took any steps to inform the Division I Committee that **Ex. 2** was false. **T.** 11. In reliance on the falsehoods contained in the fax, Division I, on May 18, 2001, voted to issue an admonition to Respondent and close the file. **Joint Ex. A**, ¶ 24.

Respondent had significant economic motivation to get his money back out of the money orders. **T.** 14. Respondent had higher priority debts at the time than the judgment he owed Ms. Campbell. **T.** 15, 27. Respondent attributes what he did to his belief that he is a lousy businessperson and to the fact that he had a lot of bills. **T.** 24. His attempt at solo practice was the "most fruitless one in history." **T.** 14. Respondent believes he got "caught in traffic robbing Peter to pay Paul." **T.** 15. Respondent does not trust himself with much money. **T.** 15. While Respondent describes himself as a "recovering alcoholic," he does not drink during the day and does not believe the money order scheme was attributable to a drinking problem. **T.** 19, 24.

In June, 2001, Respondent satisfied the judgment Ms. Campbell had obtained against him. **Joint Ex. A**, ¶ 18.

Ms. Campbell filed a complaint against Respondent with the Illinois disciplinary authorities as well as Missouri's Office of Chief Disciplinary Counsel. **T. 37.** An Illinois disciplinary hearing panel recommended a six month suspension. The Illinois case is in the process of being reviewed. **T. 38.**

An information charging Respondent with violations of Rules 4-1.3, 4-1.4, 4-1.16(d), 4-3.2, 4-3.3, 4-8.1(b), and 4-8.4(c) was served on Respondent on November 1, 2001. A Disciplinary Hearing Panel heard the case on June 5, 2002. The Panel issued its decision on July 3, 2002, concluding Respondent violated Rules 4-1.3 (diligence), 4-1.4 (communication), 4-1.16(d) (protecting client's interests upon terminating representation), 4-3.2 (expediting litigation), 4-3.3 (candor toward a tribunal), 4-8.1(a)(b) (knowingly making false statements in a disciplinary matter and failing to correct misapprehension known to have arisen in a disciplinary case), and 4-8.4(c) (engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation). The Panel recommended suspension with no leave to apply for reinstatement for nine months conditioned on Respondent's provision to the Court of information regarding his alcohol abuse and treatment therefor. Respondent did not stipulate to the Panel's decision and recommendation, causing the record to be filed with this Court.



**POINT RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE COMMITTED SERIOUS PROFESSIONAL MISCONDUCT IN THAT HE MADE FALSE STATEMENTS TO THE DISCIPLINARY COMMITTEE AND THEN DID NOT CORRECT THE MISAPPREHENSIONS RAISED BY HIS LIES IN VIOLATION OF RULES 4-3.3(a) AND 4-8.1(b) AND ENGAGED IN CONDUCT INVOLVING DISHONESTY, DECEIT, AND MISREPRESENTATION IN VIOLATION OF RULE 4-8.4(c)**

*In re Waldron*, 790 S.W.2d 456 (Mo. banc 1990)

*In re Adams*, 737 S.W.2d 714 (Mo. banc 1987) (per curiam)

*In re Disney*, 922 S.W.2d 12 (Mo. banc 1996)

Rule 4-8.1(b)

Rule 4-8.4(c)

Rule 4-3.3(a)

**POINT RELIED ON**

**II.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE COMMITTED PROFESSIONAL MISCONDUCT IN HIS REPRESENTATION OF CLIENT CAMPBELL IN THAT HE DID NOT ACT WITH REASONABLE DILIGENCE (4-1.3), HE FAILED TO KEEP MS. CAMPBELL REASONABLY INFORMED ABOUT HER MATTER AND FAILED TO RESPOND TO HER REQUESTS FOR INFORMATION (4-1.4), HE DID NOT MAKE REASONABLE EFFORTS TO EXPEDITE MS. CAMPBELL'S LITIGATION (4-3.2), AND, UPON ABANDONING MS. CAMPBELL, DID NOT TAKE REASONABLE STEPS TO PROTECT HER INTERESTS (4-1.16(d))**

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.3

Rule 4-1.4

Rule 4-1.16(d)

**POINT RELIED ON**

**III.**

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR NINE MONTHS BECAUSE RESPONDENT INTENTIONALLY VIOLATED DUTIES TO THE LEGAL SYSTEM AND KNOWINGLY VIOLATED DUTIES TO A CLIENT IN THAT THE MAY 18 FAX WAS FALSE AND SENT FOR THE PURPOSE OF DECEIVING THE DISCIPLINARY COMMITTEE, AND HE IGNORED HIS CLIENT'S MULTIPLE ATTEMPTS TO COMMUNICATE WITH HIM, NEVER FILED THE LEGAL MATTER SHE PAID HIM TO PURSUE, AND ABANDONED HIS CLIENT WITHOUT PROTECTING HER INTERESTS.**

*In re Disney*, 922 S.W.2d 12 (Mo. banc 1996)

*In re Stricker*, 808 S.W.2d 356 (Mo. banc 1991)

*In re Waldron*, 790 S.W.2d 456 (Mo. banc 1990)

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

## **ARGUMENT**

### **I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE COMMITTED SERIOUS PROFESSIONAL MISCONDUCT IN THAT HE MADE FALSE STATEMENTS TO THE DISCIPLINARY COMMITTEE AND THEN DID NOT CORRECT THE MISAPPREHENSIONS RAISED BY HIS LIES IN VIOLATION OF RULES 4-3.3(a) AND 4-8.1(b) AND ENGAGED IN CONDUCT INVOLVING DISHONESTY, DECEIT, AND MISREPRESENTATION IN VIOLATION OF RULE 4-8.4(c)**

The evidence establishing this Point is found largely within the four corners of the stipulation of facts. Respondent stipulated that the note he faxed to Mr. Klinckhardt on May 18 was false, that he knew it was false, and that his purpose in sending the false communication was to mislead the committee then deciding what to do about Ms. Campbell's complaint. Respondent testified that he took no steps to correct the misapprehensions created by his false and misleading communication. While the record does not tell us how the true state of affairs came to light, we know it was not by Respondent's remedial efforts.

Thus, the facts and even the Respondent's mental state are firmly established by the record. While Respondent did cooperate with disciplinary authorities by agreeing to a

stipulation of facts, it should be remembered that Respondent had already signed off on a like stipulation with Illinois disciplinary counsel, leaving him little room to contest the same issues in Missouri. And, it should also be remembered that the most serious of Respondent's ethical problems arose out of his intention and purpose to deceive those same disciplinary personnel.

An attorney's lack of truthfulness with respect to any part of a disciplinary case "necessarily taints his credibility with respect to the entire proceeding." *In re Waldron*, 790 S.W.2d 456, 461 (Mo. banc 1990). Lying to a tribunal "violates the most fundamental duty of an officer of the court," even though there may be no permanent injury to anyone but the respondent. *Id.* The fact that a lawyer subsequently admitted deceiving a disciplinary committee was not noted by this Court to be a mitigating factor in *In re Adams*, 737 S.W.2d 714 (Mo. banc 1987) (per curiam). Questions of honesty go to the heart of fitness to practice law. *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996). And, a lawyer who admitted typing "Trust Account" onto his personal checking account bank statement before turning it over to a disciplinary committee in the hope that the committee would "jump to some conclusions and get off my back," was found to have violated Rule 4-8.4(c), among other rules. It is clear that Respondent intentionally misled a committee authorized by this Court to investigate complaints against members of the bar, and that this Court considers such conduct to constitute very serious violations of the Rules of Professional Conduct.

## **ARGUMENT**

### **II.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE COMMITTED PROFESSIONAL MISCONDUCT IN HIS REPRESENTATION OF CLIENT CAMPBELL IN THAT HE DID NOT ACT WITH REASONABLE DILIGENCE (4-1.3), HE FAILED TO KEEP MS. CAMPBELL REASONABLY INFORMED ABOUT HER MATTER AND FAILED TO RESPOND TO HER REQUESTS FOR INFORMATION (4-1.4), HE DID NOT MAKE REASONABLE EFFORTS TO EXPEDITE MS. CAMPBELL'S LITIGATION (4-3.2), AND, UPON ABANDONING MS. CAMPBELL, DID NOT TAKE REASONABLE STEPS TO PROTECT HER INTERESTS (4-1.16(d))**

Respondent's representation of Ms. Campbell started well enough -- within several weeks of his initial meeting with her, he had drafted the motion she had requested and sent it to her for her approval and signature. Just why he never filed the motion (she had promptly signed and returned it to him) is not answered in the record. Nor do we know why he refused to return her phone calls, closed his Illinois practice and moved without telling her, and made no response to her registered letter. We do know that Respondent testified at the hearing that he just ended up ignoring her. It is, then, without dispute that

Respondent did fail in all of these duties, thereby violating multiple Rules of Professional Conduct.

While certainly not so serious as the misconduct discussed under the first Point, the misconduct described herein should not lightly be dismissed because here Respondent violated duties he owed to his client, Ms. Campbell. The A.B.A. model for assessing lawyer sanctions assumes that the most important ethical duties are the obligations a lawyer owes to his clients. A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.), at 5. By agreeing to take on Ms. Campbell's post-dissolution matter, Respondent ethically bound himself to act diligently on her behalf (4-1.3), to keep her reasonably informed about her legal matter and respond to her reasonable requests for information (4-1.4), and to protect her interests upon terminating the representation (4-1.16(d)). Respondent violated all these Rules, and Rule 4-3.2 (a duty to the legal system) by, in effect, abandoning his client without explanation and without leaving a forwarding address.

## **ARGUMENT**

### **III.**

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR NINE MONTHS BECAUSE RESPONDENT INTENTIONALLY VIOLATED DUTIES TO THE LEGAL SYSTEM AND KNOWINGLY VIOLATED DUTIES TO A CLIENT IN THAT THE MAY 18 FAX WAS FALSE AND SENT FOR THE PURPOSE OF DECEIVING THE DISCIPLINARY COMMITTEE, AND HE IGNORED HIS CLIENT'S MULTIPLE ATTEMPTS TO COMMUNICATE WITH HIM, NEVER FILED THE LEGAL MATTER SHE PAID HIM TO PURSUE, AND ABANDONED HIS CLIENT WITHOUT PROTECTING HER INTERESTS.**

Respondent intentionally violated duties to the legal system (by intentionally sending a materially false communication to the disciplinary committee with the intention of misleading it) and knowingly violated duties to his client (by ignoring his client's entreaties to communicate with her). Ultimately, Ms. Campbell had to obtain a judgment against Respondent, which Respondent failed to satisfy until four months after she obtained it. Respondent testified before the Panel that he had higher priority debts than



the one he owed Ms. Campbell, leaving one to question Respondent's understanding that a fiduciary relationship exists between an attorney and a client.

Informant submits that the Rules applicable to this case are found in the A.B.A. Standards as 4.42 and 6.12. Those black letter rules are set forth below:

**4.42** Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client;

**6.11** Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes significant or potentially significant adverse effect on the legal proceeding.

"Potential injury" is defined in the Standards as the "harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." It was certainly reasonably foreseeable that Ms. Campbell's domestic matter would not timely be resolved and could potentially harm her inasmuch as Respondent did not bother to inform Ms. Campbell that he was not going to file anything in her case and was moving his practice to St. Louis. Additionally, it was not only foreseeable, but was Respondent's intention, that the Committee would dismiss Ms. Campbell's

complaint after giving Respondent an admonition based on his false submission of information to it.

The aggravating factors present in this case include Respondent's selfish motive, the fact that he submitted false statements during the disciplinary process, and his substantial experience (at least nine years) in the practice of law at the time of the misconduct. In mitigation, the record reflects that Respondent had no prior disciplinary record and may have an alcohol abuse problem, although Respondent specifically disclaimed this as a contributing factor to the misconduct present in this case. Respondent also expressed remorse for his misconduct. Because Respondent made restitution only after his client had obtained a judgment against him and after lying to the disciplinary committee about it, it cannot be considered a "timely good faith effort to make restitution or to rectify consequences of misconduct." Rule 9.32(d), A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.). And, restitution has been said to have no bearing in a disciplinary case. *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992).

While the level of mental state present in the deceit would point to disbarment as the appropriate sanction, Informant concurs in the Disciplinary Hearing Panel's recommendation of suspension without leave to apply for reinstatement for nine months. The following cases support the imposition of suspension in a case where intentional deceit is coupled with other misconduct: *In re Disney*, 922 S.W.2d 12 (Mo. banc 1996); *In re Stricker*, 808 S.W.2d 356 (Mo. banc 1991); *In re Waldron*, 790 S.W.2d 456 (Mo. banc 1990); *In re Forge*, 747

S.W.2d 141 (Mo. banc 1988). Informant expresses no opinion as to the Panel's recommendation that as a condition to reinstatement Respondent supply proof of alcohol abuse evaluation and treatment.

## **CONCLUSION**

This is a case of intentional deceit toward the legal system and knowing dereliction of duties to a client in violation of Rules 4-1.3, 4-1.4, 4-1.16(d), 4-3.2, 4-3.3, 4-8.1(b), and 4-8.4(c). Suspension for a period of not less than nine months is the appropriate sanction given Respondent's mental state, the ethical duties he violated, the actual or potential injury caused by the misconduct, and after consideration of all aggravating and mitigating circumstances.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of September, 2002, two copies of Informant's Brief have been sent via First Class mail to:

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\_\_\_\_\_  
Sharon K. Weedin

**CERTIFICATION: SPECIAL RULE NO. 1(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Special Rule No. 1(b);
3. Contains 3,358 words, according to Microsoft Word 97, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

\_\_\_\_\_  
Sharon K. Weedin

## **APPENDIX**